THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No :16964 of 2007

DATED: 12-12-2007

BETWEEN:

Challgolla Swaroopa Rani.

..... PETITIONER

AND

The Tahsildar,
Musunuru mandal,
Krishna District.

.....RESPONDENT

ORDER:

Heard Sri C.Ramachandra Raju, learned counsel representing Writ Petitioner, and the learned A.G.P. for Assignment.

2. Respondent filed W.V.M.P.No.2730 of 2007 to vacate the interim order, dated 09-08-2000, passed in W.P.M.P.21670 of 2007 in W.P.No.16964 of 2007.

3. Writ Petition is filed by the petitioner for a writ of mandamus declaring the action of the

respondent in his proceedings Rc.S.R.No.327/07, dated 31-07-2007, as illegal, and arbitrary.

4. Sri C.Ramachandra Raju, learned counsel representing the writ petitioner, had taken this Court through the contents of the impugned order and would maintain that the explanation submitted by the writ petitioner has not been considered at all and the way in which her explanation has been considered cannot be said to be consideration and in the light of the same, impugned order to be quashed and the matter to be remitted again to the respondent.

5. Per contra, learned A.G.P. for Assignment had taken this Court through the nature of the order which had been made and would maintain that the explanation had been taken into consideration and merely because the same matter has been considered in detail, by that itself, it cannot be said that the impugned order is liable to be quashed. Even otherwise it is an appealable order and in the light of the stand taken in the counter affidavit, Writ Petition is liable to be dismissed.

6. Heard both the counsel and perused the affidavit filed in support of the Writ Petition, the counter affidavit, reply affidavit, and also the impugned order. The impugned order reads as hereunder:

"Sub":- The A.P. Assigned Lands (Prohibition of Transfers) Act, 1977-Nuzvid Division- Musunuru Mandal-Gopavaram village. R.S.No.152/1 to 8, Ac.6.39 cts-alienated- Resumption Orders issued- regarding.

Read:- 1) G.O.Ms.No.208, Revenue (ASSN.POT) department, dated 22-02-2007.
2) Rc.E3.161/2007, dt.07-03-2007 of the Collector, Krishna.
3) This Office S.R.Nos.774/07, 773/07, 609/07, 611/07, 610/07, 775/07, 613/07, dt.22-06-2007.
4) Rc.C.414/07, dt.10-07-2007 of the Rev.Dvnl.Officer, Nuzvid.

ORDER:

In pursuance of the orders issued by the Government and instructions issued by the Collector, Krishna vide references 1st and 2nd read above verification of assigned lands has been taken up in Musunuru mandal. During the process of verification of assigned lands in Gopavaram village of Musunuru mandal, it is found that the following lands to an extent of
Ac.6.39 cts., in R.S.No.152/1 to 8 of Gopavaram village which was originally assigned to the individuals noted against each are found to have been in occupation of Sri/Smt (transferee) in contravention of the provisions of sub-Section (2) of Section 3 of the A.P.Assigned Lands (Prohibition of Transfers) Act, 1977.

Sl.No.		Extent	Name of the original Assignee	Patta No.
1	152/1	0.82	Busi Munikesu	1060
2	152/2	0.78	Gorremutchu Biksham	
3	152/3	0.80	Pamula Anjaiah	1058

4	152/4	0.74	Busi Daveedu	1079
5	152/5	0.77	Pamula Anjaiah	1058
6	152/6	0.81	Pamula Mutyalu	1062
7	152/7	0.76	Pamula Maddiramaiah	
8	152/8	0.91	Godum Venkaiah	1057

A notice as required under

Section 3 of the A.P.Assigned Lands (Prohibition of Transfers) Act, 1977 was issued to Smt.Challagulla Swarooparani, w/o Naga Venkata Varaprasad directing her to show cause within 15 days of receipt of the said notice as to why she should not be summarily evicted from the said land and as to why any crop or other construction erected or anything deposited therein should not be forfeited. A notice, dated 22-06-2007, was served on her on 25-06-2007 as prescribed under rules. Before expiry of the prescribed period of 15 days

by 10-07-2007, Smt.Challagulla Swarooparani filed her explanation stating her grand mother Smt.Makineni Nagamma, w/o Venkaiah has purchased the above lands through registered sale deed Nos.2238/66, 2237/66, 2236/66, 2234/66, 2235/66 and 1160/07 and subsequently the entire land inherited to her by means of Dakalu (gift deed).

In this case Smt. Challagulla Swarooparani, w/o Naga Venkata Vara Prasad has been in possession and enjoyment to an extent of Ac. An extent of Ac.6.39 cts of assigned land in R.S.No.152/1 to 8 of Gopavaram village from the original assignees. It is therefore, a clear case of acquiring assigned land by purchase/by lease/mortgage from the original assignees and therefore according to sub-section (1) of Section 3 of the said Act, it shall never be deemed to have been transferred and accordingly no right or title in such assigned land shall vest in the person acquiring the land and according to sub-section (2) & (3) of Section 3 of the said Act. It shall be deemed to be NULL AND VOID.

Therefore, I hereby order u/s 4(1) (a) of the Act to take possession of the assigned land measuring Ac.6.39 cts. In R.S.No.152/1 to 8 of Gopavaram village of Musunuru mandal after removing the crop raised on the land, any building or other construction erected or any deposited therein shall be forfeited to Government. I also hereby order u/s 4(1) (b) of the Act to restore the assigned lands to the original assignees or their legal heirs.

The Mandal Revenue Inspector, Musunuru Mandal shall take the possession of the land after evicting the person in possession from the subject land and handover the possession of the said assigned lands to the original assignees or their legal heirs as detailed below:

Sl.No.	R.S.No.	Extent	Name of the original assignee/ Legal heir

1	152/1	0.82	Busi Munikesu
2	152/2	0.78	Gorremutchu Biksham
3	152/3	0.80	Pamula Anjaiah
4	152/4	0.74	Busi Daveedu
5	152/5	0.77	Pamula Anjaiah
6	152/6	0.81	Pamula Mutyalu
7	152/7	0.76	Pamula Maddiramaiah
8	152/8	0.91	Godum Venkaiah

The Village Revenue Officer concerned is directed to make necessary entries in the village records/Adangal to that effect.

An appeal lies against these orders with Revenue Divisional Officer within 60 days from the date of receipt of these orders.

7. It is stated by the writ petitioner that he is the absolute owner of the dry land admeasuring an extent of

Ac.6.39 cents in Sy.Nos.152/1 to 152/8 of Gopavaram village, Musunuru mandal, Krishna District. His paternal great grand mother-late Makineni Nagamma has purchased the said land under registered sale deeds in the year, 1966. After the death of his grand mother, the property was devolved on his grand father-late Sriramulu and later his father-Venkateswararao succeeded the property as legal heir. His father has gifted this property to the petitioner towards Pasupu Kumkuma. The Mandal Revenue Officer has issued pattadar pass books and title deeds in his favour in the year 1992 and the same are herewith filed as material papers. His family has been in possession and enjoyment of the said land for the last forty years, in their own right. The said land is the ancestral property of the vendors of his paternal great grand mother-late Nagamma.

8. It is further averred that whileso, the respondent has issued notices, dated 22-06-2007, to the petitioner under Section 3 of the A.P.Assigned Lands (Prohibition of Transfers) Act, 1977 (hereinafter referred to as 'Act' for the purpose of convenience), alleging that he has purchased the assigned lands. He has submitted his explanation that the land in question was purchased by his paternal great grand mother-late Nagamma under registered sale deeds in the year 1966 and that the land is the ancestral property of the vendors of her paternal great grand mother and that she is the great grand daughter of late Nagamma and that the land is gifted to her by her father and his family has been in possession and enjoyment of the land as of right for the last forty years.

9. It is also averred that the respondent has passed an order, dated 31-07-2007, resuming the land without conducting any enquiry and without considering her explanation. It is

mandatory under Rule 3 of the Rules made under the Act to conduct enquiry giving due opportunity to her for personal hearing to establish her case, before passing any order.

Rule 3 of the Rules aforesaid reads as hereunder:

> **Procedure for eviction of the transferee and taking possession and restoration of assigned lands**:- The District Collector or the authorized Officer shall , before taking action under Clauses (a) and (b) of sub-Section (1) of Section 4 of the Act, issue a notice in Form 1 to the person who acquired any assigned land in contravention of the provisions of sub-Section (2) of Section 3 of the Act. This notice shall be served by delivering a copy to him or to same adult male member of the family at his usual place of abode or to his authorized agent, or by affixing a copy thereof at some conspicuous place of his last known place of residence or on some conspicuous part of the land acquired by him. After the expiry of fifteen days specified in the notice the District collector or the authorized officer shall consider the representation, if any, received with reference to the said notice and pass such orders as he thinks fit and proper. It is held that the provisions of sub-Section (1) of Section3 of the act have been contravened in respect of any assigned land, a copy of the order shall be communicated to the Village Officer for taking possession of the land and thereupon the land shall be disposed of in accordance with sub-Clause (b) of Clause (1) of Section4 of the Act.

10. Further, it is stated that the land in question is not at all the Government land at any point of time and it was assigned to anyone. It is the ancestral property of the vendors of her paternal great grand mother-late Nagamma who purchased the land in the year 1966 under registered sale deed. When it is the private land belonging to late Nagamma under registered sale deed in the year 1966, the question of assignment does not arise as it was not a government land. The alleged assignees were never in possession and enjoyment of the land and she did not purchase the land from them.

11. Further, it is averred that the respondent has not stated either in the show cause notice or in the order as to when the land was assigned to third parties and when she has purchased the land from assignees. A statutory obligation is cast on the respondent to ascertain whether the land in question was a government land and as to when the land was assigned and when the alienation of that land took place, before passing the land. But the respondent did not conduct any enquiry whatsoever to ascertain whether it is government or private land and when the land was assigned and did not consider her registered sale deed and passed order mechanically without any application of mind. As stated supra, the order of the respondent is highly arbitrary, contrary to the provisions of the Act, violative of principles of natural justice, suffers from non-application of mind, illegal, and unconstitutional. As on today she is in possession and enjoyment of the land. The respondent may dispossess her at any moment. In such an event she suffers great hardship and irreparable loss.

12. In the counter affidavit it is stated that the Government had issued instructions to take up verification of assigned lands (both AWD and I.C.Surplus lands) and identify the cases falling under the Act for taking further action. During the process of verification of assigned lands in Gopavaram village of Musunuru mandal it is found that an extent of Ac.6.39 cts in

R.S.No.152/1 to 8 of Gopavaram village which were originally assigned to the following individuals noted against each, are found to have been in occupation of Smt.Challagulla Swarooparani, w/o Naga Venkata Varaprasad of Gopavaram village in contravention of the provisions of sub-section(2) of Section 3 of the Act. It is also stated that it is evident that Smt Challagulla Swarooparani, s/o Naga Venkata Varaprasad has been in possession and enjoyment of the assigned land of Ac.6.39 cts in R.S.No.152/1 to 8 of Gopavaram village which was purchased by her grand mother-Smt.Makineni Nagamma w/o Venkaiah through registered sale deeds from the original assignees or their legal heirs. It is therefore a clear case of acquiring assigned lands by purchase from the original assignees by her grandmother which were inherited to the writ petitioner by means of unregistered gift deed and therefore according to sub-section(1) of Section 3 of the said Act, it shall never be deemed to have been transferred and accordingly no right or title in such assigned land shall vest in the person acquiring the land and according to sub-Section (2&3) of Section 3 of the said Act, it shall be deemed to be null and void. Therefore, orders have been issued under Section 4(1)(a) of the Act to take possession of the assigned land of Ac.6.29 cts in R.S.No.152/1 to 8 of Gopavram village of Musunuru mandal and also ordered under Section 4(1)(b) of the Act to restore the assigned lands to the original assignees or their legal heirs vide this office Rc.S.R.No.327/06, dated 31-07-2007. The orders were served on 01-08-2007 and the Mandal Revenue Inspector, Musunuru has taken possession of the assigned land measuring Ac.6.39 cts in R.S.No.152/1 to 8 of Gopavaram village of Musunuru mandal on 03-08-2007 and handed over the same to the original assignees/legal heirs in the presence of the mediators by conducting panchanama in the village. Further specific stand had been taken that against the order of resumption an appeal lies to the Revenue Divisional Officer under Section 4A of the Act and without awaiting the final order, the writ petitioner approached this Court and filed the Writ Petition and hence, the same is liable to be dismissed.

13. A reply affidavit is filed again taking specific stand that the said lands were the ancestral property of the vendors to her grand mother-late Nagamma, who had purchased the same for valuable consideration and being a landless poor woman from her vendors under registered sale deeds of the year 1966. The respondent did not issue any notice as alleged in paragraph 3 of the counter affidavit. However, the respondent called for her and when she attended, took her signatures on several papers and the same must have been used to allege service of notice etc., It is equally false to allege that she is in possession of the assigned land. The said land was never assigned land nor held by the Government at any point of time. The land has always been private patta land. The assertion of the respondent that her grand mother must have purchased the land either from the original assignees or their legal heirs itself would speak volumes about the vagueness on the part of the respondent without any material evidence to show that the land was assigned or not. There is absolutely no material to show that the government held the land and assigned it to the alleged persons with condition of non-alienability.

14. Further it is stated that the respondent did not consider that the nature of the land being unassigned land even otherwise the respondent should consider the scope and ambit of Section 3(5) of Act and the effect of transfers. Non-consideration of the said aspect alternatively is also apparent legal error committed by the respondent. The respondent did not serve the copy of impugned order on 01-08-2007 nor did take possession of her land. The land is still in her possession with Palmolive grove and maize being inter crop therein. The respondent must have fabricated to the contrary effect with anti-dates after the interim suspension order passed by this Hon'ble Court on 09-08-2007. The allegation that the land was classified as assessed waste dry in revenue records and the same was assigned to several persons is not true. She does not admit the land to be assigned land. The land has always been private patta land. The Government never assigned the said land to anybody, muchless, named
8 persons. The lands were ancestral properties of the vendors of her grand mother. The alleged resumption under panchanama, dated 03-08-2007, is fabricated with anti-date after service of the interim suspension order passed in the present writ petition. The respondent being public servant stooped down to such stage consequent upon wholly arbitrary and illegal order being assailed in the writ petition. The order impugned is liable to be set aside being illegal, irregular, violative of principles of natural justice, and the provisions of the Act.

15. It is no doubt true that when an explanation is submitted the respondent is bound to consider the explanation. This Court issued Rule Nisi on 09-08-2007 and also in W.P.M.P.21670 of 2007 pending further orders interim suspension had been granted on the said day.

16. It is no doubt true that the explanation submitted by the writ petitioner had not been considered in detail or at length, but it is not as though the explanation had not been referred to at all in the impugned order. Hence, the same cannot be considered to be in violation of the principles of natural justice. It may be that the explanation was not considered by the respondent in proper perspective. However, petitioner is having a remedy by way of appeal. In the peculiar facts and circumstances, petitioner is permitted to prefer an appeal within a period of four weeks from the date of receipt of this order and the interim order granted by this Court to be operative for a period of six weeks so as to enable the petitioner to obtain appropriate orders from the appellate authority, if she is advised to do so.

17. Accordingly, Writ Petition is disposed of. No order as to costs.

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P.S.NARAYANA,J

12th December, 2007.
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